IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION No.17796 of 2002

Between:

T.Radhakrishnaiah, S/o.Veeraiah, aged 40 years,

F.P.Shop dealer, Pelleru, Chejerla Mandal,

Nellore District.

..... PETITIONER

AND

1. The District Collector, Nellore.

2. The Joint Collector, Nellore.

3. The Revenue Divisional Officer, Nellore.

4. The Mandal Revenue Officer, Chejerla Mandal,

Nellore District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the order of the Joint Collector, Nellore, the second respondent herein, in D.Dis.(E)695/2002, dated 5.8.2002, whereunder he ordered to cancel the authorization (Fair Price Shop Dealer) of the petitioner, as illegal, arbitrary, without any authority or law or jurisdiction and violative of principles of natural justice and against the provisions of A.P.S.C.(RDCS) Order, 1973 and set aside the same.

Counsel for the Petitioner: MR.V.SUDHAKAR REDDY

Counsel for the Respondent Nos.1 to 4: GP FOR CIVIL SUPPLIES

The Court made the following:

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ORDER:

The petitioner was a fair price shop dealer of Pelleru village in Chejerla Mandal of Nellore District. The Deputy Superintendent of Police (Vigilance Cell) of Civil Supplies Department along with the Mandal Revenue Officer, Chejerla, inspected the petitioner's shop on 31.12.2001 and submitted a report to the third respondent informing that the petitioner diverted rice meant for 'food for work' programme. Based on the said report, the third respondent suspended the authorization of the petitioner by order dated 16.1.2002. Be that as it is, after conducting regular enquiry, the third respondent restored the authorization of the petitioner, imposing penalty of Rs.500/- by order dated 08.3.2002.

The second respondent, who is appellate authority, having undertaken the review of the cases relating to 'food for work' programme, also reviewed the case of the petitioner and came to the conclusion that the penalty of Rs.500/- imposed by the third respondent is not in commensurate with the acts of commission and omission and accordingly ordered cancellation of the authorization. Aggrieved by the same, the petitioner herein filed a Revision petition before the District Collector, the first respondent herein, on 09.9.2002. He also filed an application before the first respondent praying for stay of the orders of the second respondent, in vain. Therefore he again filed the present writ petition on 16.9.2002 before this Court for a declaration that the order of the second respondent dated 05.8.2002 is illegal, arbitrary and without jurisdiction.

The learned Counsel for the petitioner, Sri V.Sudhakar Reddy, submits that the second respondent has no *suo motu* powers to entertain review or appeal and set aside the orders of the third respondent. Secondly, he would urge that though the petitioner preferred a revision before the first respondent, having regard to the fact that the second respondent did not pass orders under clause 17 of A.P. Scheduled Commodities (Regulation of Distribution by Card System) Order, 1973 (hereafter called 'the Control Order') a revision under Clause 18 for the first respondent is not maintainable in law and therefore, the revision petition filed by the petitioner would not bar a writ petition before this Court. The learned Counsel placed reliance on the judgments of this Court in **Estate Officer & Manager (Recoveries), A.P.I.I.C.L. v. Recovery Officer**, **K.V.S.Raju v. Flag Officer Commanding-in-Chief, Nava Base, Visakhapatnam** and the decisions of the Supreme Court in **K.Venkatachalam v. A.Swamickan** and **Whirlpool Corpn. V. Registrar of Trade Marks, Mumbai**.

Per contra, the learned Assistant Government Pleader, Sri Sesha Talpa Sai,

contends that the petitioner initially approached the District Collector by way of revision and when the District Collector refused to pass interim orders of stay of the proceedings of the second respondent, the petitioner has filed the present writ petition. According to the learned Assistant Government Pleader, the petitioner cannot be permitted to avail two remedies in law simultaneously and that the petitioner can raise all the grounds before the first respondent.

It is now well settled that availability of alternative remedy does not bar the remedy under Article 226 of the Constitution of India. Though the Court exercising the power of judicial review in its discretion ordinarily does not review the impugned decision, when there is an appellate/revisional remedy. The decision sought by the learned Counsel for the petitioner lays down said principle and insofar as this case is concerned, it has no relevance. The point that falls for consideration in this writ petition is whether the petitioner having availed the remedy under Clause 18 and having filed a revision petition before the first respondent can be permitted to invoke the jurisdiction of this Court under Article 226 of the Constitution of India?

The learned Counsel for the petitioner vehemently contends that the order passed by the second respondent is not an order under Clause 17 of the Control Order and therefore, even if the petitioner availed the remedy under Clause 18 of the Control Order, the same is not maintainable in law. According to the learned Counsel, the petitioner filed the revision by way of abundant caution and therefore, the petitioner cannot be barred from invoking the jurisdiction after getting the writ petition pending for about three years. The submission is wholly misconceived.

A reading of paragraph 5 of the affidavit accompanying the writ petition would show that the petitioner filed revision petition against the orders of the second respondent and when the second respondent refused or did not pass any orders on the application for stay, the petitioner moved this Court and obtained interim orders. The petitioner cannot be allowed, in the background of the case, to avail two remedies simultaneously. It is well settled that the remedy under Article 226 of the Constitution of India cannot be availed simultaneously along with alternative remedy. A reference may be made to **K.S.Rashid & Son v. Income-tax Investigation Commission, Carl Still G.m.b.H. v. State of Bihar** and **Bombay Metropolitan Region Development Authority, Bombay v. Gokak Patel Volkart Ltd.**.

In **K.S.Rashid v. ITI Commission** (supra), the Supreme Court observed as under.

> So far as the second point is concerned, the High Court relies upon the ordinary rule of construction that where the legislature has passed a new statute giving a new remedy, that remedy is the only one which could be pursued. It is said that the Taxation on Income (Investigation Commission) Act, 1947, itself provides a remedy against any wrong or illegal order of the Investigating Commission and under section 8(5) of the Act, the aggrieved party can apply to the appropriate Commissioner of Income-tax to refer to the High Court any question of law arising out of such order and thereupon the provisions of S.66 and 66-A of the Indian Income Tax Act shall apply with

this modification that the reference shall be heard by a bench of not less than three Judges of the High Court. We think that it is not necessary for us to express any final opinion in this case as to whether section 8(5) of the Act is to be regarded as providing the only remedy available to the aggrieved party and that it excludes altogether the remedy provided for under Article 226 of the Constitution of India. For purposes of this case it is enough to state that the remedy provided for in Article 226 of the Constitution of India is a discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it satisfied that the aggrieved party can have an adequate or suitable relief elsewhere.

I n **Carl Still G.m.b.H. v State of Bihar** (supra), the Constitution Bench of the Supreme Court held as under.

> It is next contended for the respondents that, whatever the merits of the contentions based on the construction of the contract, the proper forum to agitate them would be the authorities constituted under the Act to hear and decide disputes relating to assessment of tax, that it was open to the appellants to satisfy those authorities that there have been no sales such as are liable to be taxed, that indeed they were bound to pursue the remedies under the Act before they could invoke the jurisdiction of the court under Art. 226 and that the learned Judges of the High court were, therefore, right in declining to entertain the present petitions. It is true that if a statute sets up a tribunal and confides to it jurisdiction over certain matters and if a proceeding is properly taken before it in respect of such matters, the High court will not, in the exercise of its extraordinary jurisdiction under Art. 226, issue a prerogative writ so as to remove the proceedings out of the hands of the tribunal or interfere with their course before it. But it is equally well settled that, when proceedings are taken before a tribunal under a provision of law, which is ultra vires, it is open to a party aggrieved thereby to move the court under Art. 226 for issuing appropriate writs for quashing them on the ground that they are incompetent, without his being obliged to wait until those proceedings run their full course.

I n **Bombay Metropolitan Region Development Authority (BMRDA) v Gokak Patel Volkart Limited** (supra), the respondent who is a builder submitted a plan to Bombay Municipal Corporation for construction of thirty storeyed building in Colaba. The plan was approved by the Corporation but the respondent therein was asked to obtain 'No Objection Certificate' from Housing Commissioner. The respondent evicted the tenants and demolished the structures in 1979. In the meantime, Bombay Metropolitan Region Development Act, 1974 came into existence, which did not permit Floor Space Index (FSI) exceeding 1.33 and a person desiring more FSI has to take permission from BMRDA. Accordingly, the respondent submitted application for permission, which was refused. On appeal, the State Government granted special permission. The same was challenged by the residents of the area. The High Court set aside the order of the State Government and directed the administrator of the Corporation to pass fresh orders. Thereafter, BMRDA decided to reject the application of the respondent, aggrieved by which the respondent filed an appeal before the State Government. Even when the appeal

was pending, the respondent filed the writ petition before the High Court, which allowed the writ petition. Before the Supreme Court, it was *inter alia* contended that when the appeal was pending, the writ petition was not maintainable. Accepting the submission, the Supreme Court held:

> The contention of the appellant in this appeal is that in the first place the writ petition should not have been entertained. The writ petitioner had an adequate alternative statutory remedy. The writ petitioner had in fact already taken advantage of alternative remedy provided by the statute and had preferred an appeal against the judgment of the Tribunal. While the said appeal was pending the writ petitioner invoked the writ jurisdiction of the Bombay High Court praying more or less the same remedy as was prayed in the appeal…
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> We are of the view that the point taken by the appellant is of substance. This is a case, where there is not only the existence of an alternative remedy but the writ petitioner actually had availed of that remedy. The writ petitioner's appeal before the statutory authority was pending. In that view of the matter this writ petition should not have been entertained.

Therefore, the petitioner can as well raise the grounds as are raised herein before the revisional authority. The writ petition is misconceived. The learned Counsel for the petitioner vehemently pleaded to continue the interim orders passed by this Court by reason of which the petitioner is being continued as fair price shop dealer, Pelleru village. I am afraid, if such an order is passed, the same would amount to violating the dicta laid down by the Supreme Court that when the writ petition is being dismissed, the High Court cannot pass any orders in favour of the petitioner. It is for the petitioner to immediately approach the first respondent and obtain appropriate orders.

The writ petition, for the above reasons, is dismissed.

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(V.V.S.RAO,J)

10.6.2005

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To

1. The District Collector, Nellore.

2. The Joint Collector, Nellore.

3. The Revenue Divisional Officer, Nellore.

4. The Mandal Revenue Officer, Chejerla Mandal,

Nellore District.

5. Two CCs to the Government Pleader for Civil Supplies,

High Court Buildings, Hyderabad (OUT).

6. Two C.D. Copies.